



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 21, 2020

Mr. W. Montgomery Meitler  
Senior Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2020-26493

Dear Mr. Meitler:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 849978 (TEA PIR# R0043604).

The Texas Education Agency (the "agency") received a request for information pertaining to a specified contract. You state the agency will release most of the requested information. Although the agency takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Bank of New York Mellon ("BNY"). Accordingly, you state, and provide documentation showing, the agency notified BNY of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from a representative of BNY. We have reviewed the submitted arguments and the submitted information.

Initially, we note BNY argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the system has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested).

Accordingly, this ruling is limited to the information the agency submitted as responsive to the request for information.

We note the submitted information is subject to section 2261.253 of the Government Code. Section 2261.253 provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

*Id.* § 2261.253(a)(1). The submitted information consists of portions of a contract between the agency, which is a state agency, and BNY, a private vendor, for the purchase of goods or services. Further, the contract has neither expired nor been completed. *See id.* § 2261.002(2) (“state agency” has meaning assigned by Gov’t Code § 2151.002(3) (“state agency” includes a department, commission, board, or other agency in the executive branch of state government created by the state constitution or state statute). BNY seeks to withhold the submitted information under sections 552.110 and 552.143 of the Government Code. However, we note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Further, information that is specifically made public by statute may not be withheld under section 552.101 on the basis of common-law. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App. —Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the agency may not withhold any portion of the submitted information under section 552.110 or section 552.143 of the Government Code. Consequently, the agency must release the submitted information in its entirety pursuant to section 2261.253 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/jxd

Ref: ID# 849978

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)